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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,232	07/15/2003	Christopher W. Smith	01-02a	1201

30699 7590 11/03/2004

DAYCO PRODUCTS, LLC
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EXAMINER

HOOK, JAMES F

ART UNIT	PAPER NUMBER
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3754

DATE MAILED: 11/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/621,232

Applicant(s)

SMITH ET AL.

Examiner

James F. Hook

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7-15-03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-5, 8-15, 18-23, and 26 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 7-12 of U.S. Patent No. 6,591,871. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter of the instant application claims are encompassed by the limitations of the patented claims in '871, where the difference of the intended use of the instant application for applications that do not require dissipation of static electricity is merely intended use, and the hose claimed in '871 would be capable of the same use for applications with or without static build up dissipation.

Claim Rejections - 35 USC § 112

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Claim 2 recites the limitation "said polyalkylene terephthalate or said polyakylene naphthalate" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 12 recites the limitation "said polyalkylene terephthalate" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 8-13, 18-21, and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Ito. The reference to Ito discloses the recited tubular structure for use with fuel systems which inherently has impereability properties where the tubular structure comprises using a polyalkylene terephthalate or naphthalate such as polybutylene terephthalate , the inner layer can be formed of a single or multiple layers where elemental carbon or carbon black can be used to provide the inner layer with static dissipating properties, and where a protective cover layer can be provided which can be made of a polyolefin such as polypropylene or polyamides such as nylons, and the use of the tube for connecting to a fuel filler funnel is considered intended use.

Claims 1-3, 8, 9, 11-13, and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Stieler. The reference to Stieler discloses the recited tubular structure for use with fuel systems and vapor recovery which inherently has impereability properties where the tubular structure comprises using a polyalkylene terephthalate or naphthalate such as polybutylene terephthalate , the inner layer can be formed of a single or multiple layers where elemental carbon or carbon black can be used to provide the inner layer with static dissipating properties, and where a protective cover layer can be provided which can be made of a polyolefin such as polypropylene or polyamides such as nylons, the tube can be made of one or more layers, corrugations can be provided, and the use of the tube for connecting to a fuel filler funnel is considered intended use.

Claims 1-3, 8, 9, 11-13, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Brunnhofer. The reference to Brunnhofer discloses the recited tubular structure for use with fuel systems which inherently has impereability properties where the tubular structure comprises using a polyalkylene terephthalate or naphthalate such as polybutylene terephthalate ,the inner layer 1 can be formed of a single or multiple layers, and where a protective cover layer 2 can be provided which can be made of a polyolefin such as polypropylene or polyamides such as nylons, and the use of the tube for connecting to a fuel filler funnel is considered intended use.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 5, 14, 15, 22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ito in view of Walsh. The reference to Ito discloses all of the recited structure with the exception of using chlorinated polyolefins such as chlorinated polyethylene for the outer layer. The patent to Walsh discloses a fuel tube comprising an inner layer 12 which can be made conductive and a protective layer 14 which can be made of chlorinated polyolefins of which polyethylene and polypropylene are known polyolefins. It would have been obvious to one skilled in the art to modify the cover layer of Ito to be formed of a chlorinated polyolefin as suggested by Walsh as such is another type of material used for cover layers which has different and improved properties.

Claims 4, 5, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brunnhofer in view of Walsh. The reference to Brunnhofer discloses all of the recited structure with the exception of using chlorinated polyolefins such as chlorinated polyethylene for the outer layer. The patent to Walsh discloses a fuel tube comprising an inner layer 12 which can be made conductive and a protective layer 14 which can be made of chlorinated polyolefins of which polyethylene and polypropylene are known polyolefins. It would have been obvious to one skilled in the art to modify the cover layer of Brunnhofer to be formed of a chlorinated polyolefin as suggested by Walsh as such is another type of material used for cover layers which has different and improved properties.

Claims 6, 7, 16, 17, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ito in view of Kawazura. The patent to Ito discloses all of the recited structure with the exception of providing a tie layer to connect the inner and outer layers formed of anhydride modified linear low density polyethylene. The patent to Kawazura discloses that it is old and well known to provide a connective or tie layer made of anhydride modified linear low density polyethylene to connect inner and outer layers made of different materials including PBT and PBN. It would have been obvious to one skilled in the art to modify the hose in Ito by providing a tie layer formed of anhydride modified linear low density polyethylene to connect the PBT or PBN layer to other material layers as suggested by Kawazura to prevent delamination and thereby save repair or replacement costs.

Claims 6, 7, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brunnhofer in view of Kawazura. The patent to Brunnhofer discloses all of the recited structure with the exception of providing a tie layer to connect the inner and outer layers formed of anhydride modified linear low density polyethylene. The patent to Kawazura discloses that it is old and well known to provide a connective or tie layer made of anhydride modified linear low density polyethylene to connect inner and outer layers made of different materials including PBT and PBN. It would have been obvious to one skilled in the art to modify the hose in Brunnhofer by providing a tie layer formed of anhydride modified linear low density polyethylene to connect the PBT or PBN layer to other material layers as suggested by Kawazura to prevent delamination and thereby save repair or replacement costs.

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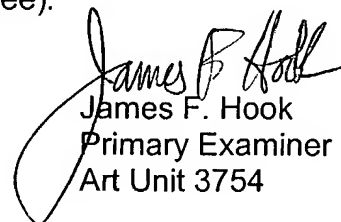
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Miyajima, Nishino, Hsich, Iio, and Ishida disclosing state of the art multilayer hoses.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James F. Hook whose telephone number is (703) 308-2913 until November 23, 2004 at which point it will change to (571) 272-4903. The examiner can normally be reached on Monday to Wednesday, work at home Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (703) 308-2087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


James F. Hook
Primary Examiner
Art Unit 3754

JFH